

## Message Text

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TO AMEMBASSY MADRID IMMEDIATE

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E.O. 11652: GDS

TAGS: PFOR, SP

SUBJECT: US INSTRUMENT OF RATIFICATION OF NEW TREATY

REF: MADRID 5585

1. DEPARTMENT HAS IDENTIFIED CERTAIN OPTIONS WHICH  
COULD BE FOLLOWED IN DRAWING UP US INSTRUMENT OF  
RATIFICATION OF NEW TREATY. APART FROM BASIC LEGAL  
REQUIREMENTS, OUR PRINCIPAL CONCERN IS TO WEIGH COSTS/  
BENEFITS OF MEETING SPANISH DESIRE TO AVOID INCLUSION OF  
SENATE DECLARATION IN ADVICE AND CONSENT RESOLUTION  
AGAINST POSSIBLE ADVERSE SENATE REACTION IF WE APPEAR TO  
OVERLOOK THAT CLEAR EXPRESSION OF SENATE OPINION,  
ESPECIALLY IF WE ACT WITHOUT PRIOR CONSULTATION.

2. AS WE SEE IT, THERE ARE FOUR POSSIBILITIES: A.

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INSTRUMENT COULD REFER TO SENATE RESOLUTION OF ADVICE AND

CONSENT, " SUBJECT TO FOLLOWING DECLARATION" AND THEN QUOTE TEXTS OF PARAS 1 THROUGH 5 OF SENATE RESOLUTION. THIS APPROACH WOULD BE CONSISTENT WITH TREATY PRACTICE AND WITH SENATE EXPECTATIONS BASED ON SUCH PRACTICE, BUT IS OF COURSE WHAT SPANISH ARE OBJECTING TO AS MODIFICATION OF ORIGINAL AGREEMENT BETWEEN THE TWO GOVERNMENTS (WHICH IT IS NOT).

B. INSTRUMENT COULD REFER TO SENATE RESOLUTION, "SUBJECT TO FOLLOWING DECLARATIONS" THEN QUOTE TEXTS OF PARAS 4 AND 5 OF SENATE RESOLUTION. WHEN EXCHANGING INSTRUMENTS OF RATIFICATION WE WOULD GIVE GOS A NOTE CONTAINING TEXTS. THIS APPROACH WOULD PERMIT US REASONABLE ARGUMENT WITH SENATE THAT WE HAD INCLUDED THE ONLY TWO OPERATIVE PARAGRAPHS WHILE EXPLAINING TO THE GOS THAT THESE PARAGRAPHS HAD NO EFFECT ON THEM INASMUCH AS THEY DEAL ONLY WITH INTERNAL USG PROCESSES FOR CARRYING OUT THE TREATY. HOWEVER, THERE MIGHT BE SOME RISK THAT THE SENATE MIGHT MISCONSTRUE THIS APPROACH AS A UNILATERAL EXECUTIVE ATTEMPT TO PICK AND CHOOSE WHAT WE LIKE FROM SENATE ACTION.

C. INSTRUMENT COULD REFER TO SENATE RESOLUTION OF ADVICE AND CONSENT "SUBJECT TO CERTAIN DECLARATIONS" BUT WITHOUT FURTHER ELABORATION OR QUOTATION. TEXT OF SENATE DECLARATION WOULD THEN BE GIVEN TO GOS IN SEPARATE NOTE AS IN PARA B ABOVE. THIS APPROACH WOULD PERMIT US TO EXPLAIN TO SENATE THAT THEIR ACTION WAS PROPERLY TAKEN INTO ACCOUNT IN INSTRUMENT AND THAT GOS WAS OFFICIALLY GIVEN FULL TEXT OF SENATE RESOLUTION. WE COULD ALSO EXPLAIN TO GOS THAT LEGALLY SENATE DECLARATION HAS NO EFFECT ON SPAIN, THOUGH POINTS 4 AND 5 WERE OPERATIVE FOR US EXECUTIVE BRANCH.

D. FINALLY, WE COULD DRAFT SIMPLE INSTRUMENT OF RATIFICATION WHICH WOULD REFER TO ADVICE AND CONSENT RESOLUTION BUT WOULD NOT MENTION SENATE DECLARATION SPECIFICALLY. SEPARATE DIPLOMATIC NOTE WITH DECLARATION COULD BE HANDED TO SPANISH AT SAME TIME INSTRUMENTS WERE EXCHANGED. THIS APPROACH WOULD BE LEGALLY ACCEPTABLE (ALTHOUGH OMISSION OF OPERATIVE PARAGRAPHS SUCH AS 4 AND 5 IS PROBABLY UNPRE-CONFIDENTIAL

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CEDENTED) AND WOULD OF COURSE BE LEAST TROUBLESOME APPROACH FOR GOS, SINCE THEY COULD RESPOND WITH SIMPLE ACKNOWLEDGEMENT THAT THEY HAD BEEN INFORMED OF SENATE RESOLUTION. HOWEVER, THIS COURSE INVOLVES THE RISK THAT KEY SENATORS WOULD VIEW IT AS AN EFFORT TO CIRCUMVENT AND IGNORE THE

SENATE ACTION MAKING THEIR ADVICE AND CONSENT SUBJECT TO THE DECLARATION. THIS RISK CAN PROBABLY NOT BE REDUCED

BY CONSULTING BEFOREHAND WITH THOSE SENATORS OR THE COMMITTEE, SINCE IT IS VERY LIKELY THAT IF WE SOUGHT THEIR VIEWS, THEY WOULD INSIST ON INCLUSION OF THE FULL DECLARATION DESPITE OUR ARGUMENT THAT IT WAS NEITHER NECESSARY NOR DESIRABLE. IT GOES WITHOUT SAYING THAT SENATE UNHAPPINESS OVER THIS ISSUE WOULD DO US NO GOOD WHEN WE MUST GO BEFORE THE CONGRESS FOR EACH YEAR'S FUNDING UNDER THE TREATY.

3. DEPARTMENT WOULD APPRECIATE YOUR ASSESSMENT AS SOON AS POSSIBLE REGARDING LIKELY SPANISH REACTIONS TO THE OPTIONS LISTED ABOVE, INCLUDING LIKELY DAMAGE TO BILATERAL RELATIONS, SPANISH ATTITUDE TOWARD THE TREATY, AND GOS RESPONSIVENESS ON OTHER ISSUES OF INTEREST. ROBINSON

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